APPENDIX A

INTRODUCTION

This matter came before the Board on appeal from an October 1990 rating decision of the New York. N.Y. Regional Office (RO). The veterans notice of disagreement was received by the Dept.. of Veterans Affairs (VA) in November 1990. The Statement of t..e Case was issued in May 1991, and the veteran's substantive appeal was received in June 1991. The veteran testified before a section of the Board of Veterans' Appeals in Washington. D.C. in December 1991. The case is now ready for appellate review.

CONTENTIONS OF APPELLANT ON APPEAL

The veteran contended at his December 1991 personal hearing before the Board of Veterans' Appeals that Navy and VA physicians deliberately misdiagnosed his condition, calling it schizophrenia, which caused him great harm. The veteran believes that he should receive VA compensation as a result of this misdiagnosis.

DECISION OF THE BOARD

For the reasons and basis hereinafter set forth, it is the decision of the board that the veteran's claim is not within the Board's jurisdiction, and the appeal should, therefore, be dismissed.

FINDING OF FACT

The veteran alleges that the Navy and the VA commited and intentional tort that entitles him to VA compensation.

CONCLUSION OF LAW

The veterans claim is not within the jurisdiction of the Board of Veterans' Appeals. 38 U.S.C. & 7104(a) (formerly 38 U.S.C. & 4004(a); 38 C.F.R. & 19.112.

REASONS AND BASIS FOR FINDINGS AND CONCLUSIONS

The veteran made it very clear at this personal hearing before a section of the Board of Veterans' Appeals in December 1991 that he really wanted benefits to compensate for harm caused because Navy and VA phsyicians deliberately misdiagnosed his condition as schizophrenia beginning in service. This is, in effect, for intentional infliction of emotional distress, which comes under the Federal Tort Claims Act. This type of claim is outside the jurisdiction of the Board of Veterans' Appeals, since the Board's jurisdiction only extends to questions on claims involving benefits under the laws administered by the VA. 38U.S.C. & 7104(a);38 C.F.R. & 19.112(a).

BOARD OF VETERANS' APPEALS
Washington, D.C. 20420

DOCKET NO. 91-41 487 DATED: Feb. 25, 1992

THE ISSUE

Entitlement to VA compensation benefits due to the deliberate VA misdiagnosis of a psychiatric disorder that has resulted in subsequent harm to the veteran.

REPRESENTATION

Appellant represented by: The American Legion

WITNESS AT HEARING ON APPEAL

The Veteran

ATTORNEY FOR THE BOARD

J. W. Loeb, Counsel

ORDER

The veteran's appeal dismissed.

(NOTE: The section numbers of title 38, United States Code, were changed in 1991. The section numbers are given above, followed in parentheses, by "formerly &" and the old section numbers in effect prior to the 1991 revisions.)

BOARD OF VETERANS' APPEALS
Washington, D.C. 20420

C.W. Foulke, M.D. Richard B. Fra

Philip W. Wright

NOTICE OF APPELLATE RIGHTS: Under 38 U.S.C. & 7266 (1991) (formerly & 40.6), a decision of the Board of Veterans'

UNITED STATES COURT OF VETERANS APPEALS

No. 92-381

CHARLES W. JANOSIK, APPELLANT,

V.

JESSE BROWN,
Secretary of Veteran Affairs, Appellee.

Before NEBEKER, Chief Judge.

MEMORANDUM DECISION

NEBEKER, Chief Judge: Appellant, Charles Janosik appeals a February 25, 1992, Board of Veterans' Appeals (BVA decision which dismissed his claim for entitlement to Department of Veterans Affairs (VA) compensation benefits. Appellant pursues a claim for VA benefits in compensation for damages allegedly resulting from the deliberate VA misdiagnosis of a psychiatric disorder. The Secretary of Veterans Affairs (Secretary) filed a brief. The appellant filed an informal brief and a reply to the Secretary's brief. The Court affirms the BVA decision to dismiss his claim.

Appellant contends that he is entitled to a 100% schedular evaluation in compensation for damages which he suffered as a result of an intentional misdiagnosis of schizophrenia. He claims that the Navy and VA conspired to label him as a schizophrenic and that he

suffered lost wages and lost employment opportunities as a result of the misdiagnosis. The BVA, citing lack of jurisdiction to contemplate claims of Intentional Tort, dismissed appellant's claim.

Pursuant to section 7104(a) of title 38 of the United States Code, the BVA has jurisdiction to review all questions concerning VA benefits which are subject to a decision of the Secretary. See 38 U.S.C.A. § 511(a).A claim for compensation for an intentional tort is not a matter concerning VA benefits. Appellants claim lies outside laws concerning benefits administered by the VA and, consequently, lies outside the jurisdiction of the BVA. See Verner v. United States, 804 F.Supp. 381 (D.D.C. 1992) (U.S. District Court has jurisdiction over tort claims against VA); See also Martin v. Principi, 3 Vet. App.553(1992).

Upon consideration of the pleadings of the parties and the record on appeal, the Court holds that appellant has not demonstrated that the BVA committed either factual or legal error which would warrant reversal. Gilbert v. Derwinski, 1 Vet.App.49,53(1990; see also Anderson v. City of Bessemer City, 470 U.S. 564(1985); Danville Plywood Corp. v. United States, 899F.2d 3 (Fed. Cir.1990).

Summary affirmance is appropriate. Frankel v. Derwinski 1 Vet.Appl. 23 (1990).

Therefore, the decision of the BVA to dismiss appellant's claim for lack of jurisdiction is AFFIRMED.

DATED: Mar. 23, 1993.

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

93-7072
CHARLES W. JANOSIK,
Claimant-Appellant

v.

JESSE BROWN
SECRETARY OF VETERANS AFFAIRS
Respondent- Appellee

DECIDED: October 12, 1993

Before MICHEL, LOURIE, AND SCHALL, Circuit Judges.
PER CURIAM.

DECISION

Charles W. Janosik appeals from a judgment of the United States Court of Veterans Appeals affirming a decision by the Board of Veterans' Appeals dismissing for lack of jurisdiction his claim for Veteran's Compensation benefits, Janosik v. Brown , No. 92-381Ct.Vet.App. March 23, 1993). Because we do not have jurisdiction to hear Janosik's appeal, we dismiss.

DISCUSSION

On February 2, 1992, the Board dismissed Janosik's claim for entitlement to veteran's compensation benefits. Specifically, Janosik claimed entitlment to a 100% schedular evaluation in compensation for damages suffered.

as a result of an alledgedly intentional mis-diagnosis of a psychiatric disorder. Janosik asserts that 48 years ago the Navy and VA conspired to label him as schizophrenic, causing him to suffer lost wages, lost employment opportunities, and physical and emotional distress.

Janosik appealed the Board's decision to the Court of Veterans Appeals, which affirmed that Janosik's claim of intentional tort was not remediable under the veterans' benefits statutes and consequently was not within the jurisdiction of the Board. On appeal to this court, Janosik does not contest that conclusion. Rather, he complains that certain documents in his Counter Designation of the Record were not taken into consideration pursuant to Rule 10 of the Court of Veterans Appeals; Rules of practice and procedure. Also, Janosik alleges that appellee failed to comply with an order of the Court to supplement the record on appeal pursuant to Rule 11(b).

The scope of this court's review in appeals from the Court of Veterans Appeals is limited by its statutory grant of jurisdiction, 38 U.S.C.&7292 (1988). Livingston v. Derwinski, 959 F. 2d 224,225 (Fed. Cir.

1992). Specifically, we may only "review and decide any challenge to the validity of any statute or regulation of any interpretation thereof...and...interpret constitional and statutory provisions, to the extent presented and necessary to a decision (by Court of Veterans Appeals.)" 38 U.S.C.&729s. (Our jurisdictional scheme must be strictly construed in harmony with our congressional mandate, and we may not, even in the interest of justice, extend our jurisdiction were none exist." Livingston, 989F.2d at 225.

Claims that the Court of Veterans Appeals failed to take into consideration certain documents or that the Appellee failed to comply with a court order do not challenge the validity of any statute or regulation or interpretation thereof, nor do they require interpretation of constitutional or statutory provisions. Thus, Janosik's claims do not fall within our statutory grant of jurisdiction, and we are precluded by law from hearing Janosik's appeal. Accordingly, we dismiss.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

93-7072

CHARLES W. JANOSIK,

Claimant-Appellant,

v.

JESSE BROWN
Secretary of Veterans Affairs,

Respondent-Appellee.

JUDGMENT

ON APPEAL FROM THE UNITED STATES COURT OF VETERANS APPEALS

in CASE No.(s). 92-381

This CAUSE HAVING been heard and considered, it is

ORDERED AND ADJUDGED:

DISMISSED

ENTERED BY ORDER OF THE COURT

DATED: Oct. 12, 1993 Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: November 2, 1993

APPENDIX D

AMENDMENT 14TH TO THE UNITED STATES CONSTITUTION

A tort is an act that violates your private or personal rights. A tort injures you physically, attacks your reputation without justification. It takes away your liberty and freedom of action without just cause. It is intentional inteference with your personal rights. You have a right to freedom from deliberate misuse of the laws of the courts. Inteference with your reputation, freedom from unwarranted, untruthful attacks on your character. Malicious abuse of process using legal process to harrass someone. Inteference with your person, you have a right to be free from bodily injury. You have a right to be free from suffering or distress from more mental than physical or a combination of both. You have a right to be free of a mental inteference with your right, the touching of the mind, not the body. Damages for mental upset and for physical illness that may result. Inteference with your peace of mind. Freedom from fear of apprehension, intentionally inflicting mental suffering. Inteference with your privacy, giving objectional publicity to private information about you.